

COUNTY OF SUFFOLK



STEVE LEVY
SUFFOLK COUNTY EXECUTIVE

CHRISTINE MALAFI
COUNTY ATTORNEY

DEPARTMENT OF LAW
ADDRESS ALL COMMUNICATIONS
IN THIS MATTER TO:

April 13, 2010

Hon. Sandra M. Townes, USDJ
Brooklyn Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201-1818

Re: Frazier v. Suffolk County Correctional Facility, et al.
Docket No. CV-08-0998 (SLT)(JO)

Dear Hon. Judge Townes:

ORDER:

Plaintiff shall file a written reply to
this letter on or before April 30, 2010. In
that reply, plaintiff shall state whether he
received defendant's motion
papers and, if so, approximately
when he received them.

So ordered:

SL USDJ Sandra L. Townes
U.S.D.J.

The County is in receipt of an "Affirmation in Support of Request to Bar the Defendants From Filing Motion to Dismiss" from the plaintiff, Gary Frazier.

As the docket indicates, the defendants were granted permission to move to dismiss plaintiff's action. (Docket #24) Pursuant to the court's order, the County was to serve its motion papers by overnight mail on or before March 2, 2009. Attached hereto is an affidavit of service indicating that the County mailed the motion papers on December 20, 2008. The plaintiff filed his opposition to the motion with the court on March 11, 2009. (Docket # 28) Therefore, it is clear that the plaintiff did, in fact, receive the motion papers.

Pursuant to the court's order, the County was to have electronically filed all papers with the court on or before April 13, 2009. (Docket #24) Unfortunately, for reasons that are not clear, although the motion papers are in the file, the motion was never electronically filed. The secretary for Mr. Dunne at that time, Frances Bohm, is no longer with the office.

Mr. Dunne is currently on vacation. Prior to leaving on vacation he advised the undersigned that he had been contacted by Magistrate Orenstein's chambers as to the status of the motion. My understanding is that Mr. Dunne was advised that he would receive guidance from the court as to how to proceed.


We would respectfully request that the court allow the County to file the motion at this time. As the court noted in its decision allowing the County to file a motion, it would appear that plaintiff's claim is subject to dismissal.

Wherefore, we would respectfully request that the court allow the filing of the County's motion.

Thank you.

Very truly yours,

Christine Malafi
Suffolk County Attorney

By 

Susan A. Flynn
Bureau Chief - State & Federal Torts Bureau

SAF:snl

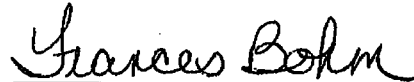
AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
COUNTY OF SUFFOLK)ss.:

Frances Bohm, being duly sworn, deposes and says: That I am over 18 years of age and associated with the Suffolk County Attorney. That on the **20th** day of **December 2008** she served **Notice of Motion, Affirmation in Support and Memorandum of Law in Support** in the matter of **Frazier v. County of Suffolk, et al., Index No. 08-0998**, upon the person hereinafter named and by depositing a true copy thereof, enclosed in a post-paid properly addressed mail wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

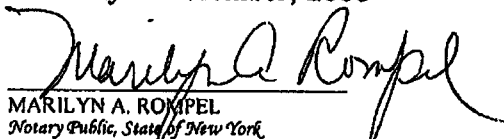
To:

Gary Frazier, 08-A-3473
Plaintiff Pro se
Cayuga Correctional Facility
P.O. Box 1186
Moravia, NY 13118



Frances Bohm

Sworn to before me this
19th day of December, 2008



MARILYN A. ROMPEL
Notary Public, State of New York
No. 01R04883136
Qualified in Suffolk County
Commission Expires Feb. 9, 2011